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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	CC Docket No. 96-187
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	

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COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services (ALTS), pursuant to the Commission's Notice of Proposed Rulemaking in the above-captioned docket, FCC 96-367, released September 6, 1996, hereby submits its initial comments on the proposals contained therein.

I. SUMMARY

ALTS supports some of the proposals in the Notice relating to the streamlining of tariff filings, including, in particular, the proposal to establish a program for the electronic filing of tariffs. ALTS urges the Commission, however, not to interpret the relevant sections of the Telecommunications Act so broadly as to undermine the ability of the Commission to protect the public should unlawful or anti-competitive tariffs be filed. Congress clearly intended to shorten the time between the filing of certain tariffs and their effective date absent action by the

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Commission.[1] Congress clearly did not intend for tariffs to take effect without any Commission review or for the Commission to be powerless to protect the public. It must be remembered that Congress left intact the basic tariffing requirements of the 1934 Act: LECs must file tariffs, the Commission may suspend and investigate and reject tariffs, the Commission may prescribe rates, and customers may obtain damages under the Section 207-208 complaint process.

I. ALT'S INTEREST IN THIS PROCEEDING

ALTS is the non-profit national trade association representing competitive providers of local telecommunications services. ALTS' membership includes over thirty non-dominant providers of competitive access and local exchange services that deploy innovative technologies in many areas across the country.

As providers of competitive access and local exchange services, the members of ALTS compete directly with the local exchange carriers to whom the proposed rules would apply. The members of ALTS have an interest in ensuring that the provisions of Section 204(a)(3) are implemented in a manner that is consistent with the intent of the entire Teleommunications Act of 1996 and that ensures protection for customers and competitors against potentially anticompetitive tariff changes.

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[1] See Notice at footnote 11.

II. CONGRESS' USE OF THE PHRASE "DEEMED LAWFUL" SHOULD NOT BE INTERPRETED AS A DETERMINATION OF THE LAWFULNESS OF THE TARIFF.

The Commission requests comment on the meaning of the term "deemed lawful" in Section 204(a)(3) of the Communications Act. As ALTS understands it, the Commission believes that Congress used the term "deemed lawful" to indicate either that the tariff would have the same legal status as if the Commission actually had made a finding of lawfulness or to indicate that a presumption of legality is raised and the burden of proof is upon the challenger to show that the tariff is not legal.

The distinction is important because when there has been an actual finding as to the lawfulness of the tariff the carrier may not retroactively be subject to reparations for charging the tariffed rate if the agency subsequently declares the tariffed rate to be unreasonable. On the other hand if "deemed lawful" only raises a presumption that the tariff is lawful, the tariff may be subsequently challenged and the carrier may be required to pay damages for monies collected under the tariff found to be unlawful.

There is no evidence that Congress intended that the term "deemed lawful" be equivalent to a finding by the Commission of lawfulness. It is almost inconceivable that Congress could have intended that tariffs taking effect under a streamlined process should have the same effect as a thoroughly investigated tariff.

While Congress clearly intended to streamline the effectiveness of tariffs and the FCC processes related thereto, there is no indication that it sought to take away the rights of customers to challenge and seek reparation from unlawful rates. The Commission cannot neglect the fact that inbumbent LECs still retain monopoly power and the ability to raise or lower rates virtually at will. This market power will not change overnight, even with the advent of local competition.

III. STREAMLINED FILINGS SHOULD BE LIMITED TO LOCAL EXCHANGE CARRIER TARIFFS THAT INCREASE OR DECREASE EXISTING RATES.

The Commission tentatively concluded that local exchange carrier tariff filings that involve changes to terms, conditions or rates are available for streamlined treatment. The Commission interpreted the first sentence of Section 204(a)(3) as suggesting that "any tariff filing may be eligible for streamlined treatment. (Notice at para. 17)

Section 204(a)(3), taken as a whole, however, is more clearly read as providing that streamlined treatment is applicable only to changes in rates. The first sentence in subparagraph (3) provides that a local exchange carrier "may file with the Commission a new or revised charge, classification, regulation or practice on a streamlined basis." ALTS recognizes that a broad reading of this sentence alone raises a question as to whether changes in terms and conditions are eligible for streamlined treatment. However, the next sentence clearly

indicates that Congress contemplated streamlined filings only for changes that raise or lower rates. That sentence provides:

> Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period, as appropriate

Had Congress intended changes in terms and conditions other than rate changes to be subject to streamlined filing it easily could have added a sentence to the effect that all other changes shall be effective after a certain number of days. Congress chose not to do so.

There are also public policy reasons why the Commission should not allow changes in the terms and conditions of a tariff offering to become effective as quickly as changes in rates. Presumably, most charges in rates would be within-band and thus relatively routine and in need of less scrutiny. On the other hand, changes in terms and conditions are more likely to involve issues of competitive and consumer harm.

In addition, it would make no sense to allow tariffs that require a waiver of any Commission rule or Order to become effective under the streamlined process unless a waiver has been granted before the filing of the tariff. Filing LECs should be required to certify that any changes eligible for streamlined filing do not require waivers of Commission Rules or Orders.

The Commission also asks whether the streamlined procedure

should apply to new services. New services by definition do not involve either an increase or decrease in rates. In addition, a new service is likely to raise many more questions than changes in existing tariffs. The current practice of tariffs for new services becoming effective after 45 days is not unreasonable. Therefore, tariffs for new services should not be eligible for the streamlined procedure.

IV. THE COMMISSION CANNOT PLACE "EXCLUSIVE RELIANCE" ON POST-EFFECTIVE REVIEW OF TARIFFS.

Paragraphs 23 and 24 of the Notice raise the question of whether the Commission should "establish a practice of relying on post-effective review" at least for some "classes" of tariff transmittals.

Even assuming, arguendo, that the Commission could adopt such a policy, it would make no sense to do so. As the Commission notes, Section 204(a)(1) relating to suspension of tariffs, was unaffected by the '96 Act. And, in fact, Subsection (a)(3), specifically states that the tariffs shall be deemed lawful "unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period . . . " Clearly Congress intended that the Commission suspend questionable tariffs.

In passing Section 204(a)(3), Congress meant to speed the process for pre-effective tariff review but not to do away with

it altogether. Had Congress intended to take away the suspension power it could easily have done so by stating that tariffs would be effective upon filing. It makes no sense to tie the hands of the Commission when, within the seven or fifteen day period, significant questions about the lawfulness of a tariff are raised.

CONCLUSION

For the foregoing reasons, ALTS respectfully requests that the Commission adopt rules that preserve the Commission's ability to protect the public and competitors from potentially illegal tariff filings while implementing the clear intent of Section 204(a)(3) to streamline certain filings of the incumbent LECs.

By: Emily M. Williams

Richard J. Metzger
General Counsel

Emily M. Williams
Association for Local Telecommunications Services
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 466-0658

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Association for Local Telecommunications Services was served October 9, 1996, on the following persons by hand service.

Emily M. Williams

Emily M. Williams

Regina Keeney
Chief, Common Carrier Bureau
Room 500
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

James Schlichting
Chief, Competitive Pricing Division
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Jerry McKoy
Common Carrier Bureau
1919 M Street, N.W. Room 518
Washington, D.C. 20554

ITS
2100 M Street, N.W. Suite 140
Washington, D.C. 20037